

**IN THE HIGH COURT OF THE GAMBIA**  
CRIMINAL CASE NO. HC/179/16/CR/060/AO

BETWEEN:

**THE STATE** ... **COMPLAINANT**

**AND**

<b>OUSAINOU DARBOE</b>	...	<b>1<sup>ST</sup> ACCUSED PERSON</b>
<b>KEMESSENG JAMMEH...</b>	...	<b>2<sup>ND</sup> ACCUSED PERSON</b>
<b>FEMI PETERS</b>	...	<b>3<sup>RD</sup> ACCUSED PERSON</b>
<b>LAMIN DIBBA</b>	...	<b>4<sup>TH</sup> ACCUSED PERSON</b>
<b>LAMIN JATTA</b>	...	<b>5<sup>TH</sup> ACCUSED PERSON</b>
<b>YAYA BAH</b>	...	<b>6<sup>TH</sup> ACCUSED PERSON</b>
<b>BABUCARR CAMARA</b>	...	<b>7<sup>TH</sup> ACCUSED PERSON</b>
<b>FAKEBBA COLLEY</b>	...	<b>8<sup>TH</sup> ACCUSED PERSON</b>
<b>ISMAILA CEESAY</b>	...	<b>9<sup>TH</sup> ACCUSED PERSON</b>
<b>MOMODOU FATTY</b>	...	<b>10<sup>TH</sup> ACCUSED PERSON</b>
<b>DODOU CEESAY</b>	...	<b>11<sup>TH</sup> ACCUSED PERSON</b>
<b>SAMBA KINTEH</b>	...	<b>12<sup>TH</sup> ACCUSED PERSON</b>
<b>MAMUDU MANNEH</b>	...	<b>13<sup>TH</sup> ACCUSED PERSON</b>
<b>NFAMARA KUYATEH</b>	...	<b>14<sup>TH</sup> ACCUSED PERSON</b>
<b>FANTA DARBOE</b>	...	<b>15<sup>TH</sup> ACCUSED PERSON</b>
<b>LAMIN NJIE</b>	...	<b>16<sup>TH</sup> ACCUSED PERSON</b>
<b>JUGUNA SUSSO</b>	...	<b>17<sup>TH</sup> ACCUSED PERSON</b>
<b>MOMODOU L.K SANNEH</b>	...	<b>18<sup>TH</sup> ACCUSED PERSON</b>
<b>YAYA JAMMEH</b>	...	<b>19<sup>TH</sup> ACCUSED PERSON</b>
<b>MASANEH LALLO JAWLA</b>	...	<b>20<sup>TH</sup> ACCUSED PERSON</b>

**ALLOCUTUS OUSAINOU DARBOE WAS NOT ALLOWED TO MAKE  
UPON CONVICTION ON 20<sup>TH</sup> JULY 2016**

May it please the Honourable Court, I am 67 years old. At the age of 19 I started the pursuit of knowledge in earnest. I focused on attaining qualification for admission to University. My goal was to read philosophy and political science. Then I had no vision. In the Christmas of 1967, I was home for the Christmas vacation. On a day, the exact date of which I cannot recollect, I found my father sitting with some of his constituents – my father was then the Honourable member representing Lower Fulladu in the House of Representatives. He introduced me to his supporters in words I have never forgotten and I will never forget i.e “Comrade (meaning comrades) this is my son, he is in form six in Gambia High School and when he finishes his study in Gambia High School, he will go to England to study and come back to be the Commissioner M.I.D (McCarthy Island Division)”. His comrades prayed for my success at my exams and the fulfillment of my father’s dream.

From that day I had a vision – a vision to have a University degree and return to The Gambia to serve my people, particularly the people of M.I.D now C.R.D. (Central River Division). I envisioned myself going to the villages to talk to the people not just as an administrator but as their brother, cousin, nephew and son. One who can easily appreciate that the problems faced by every person in M.I.D is the same problem that my mother, aunt and uncle face.

However my father's dreams which formed the basis of my vision in life was not to be. An incident occurred in this country whilst I was still a sixth former. The President of Senegal had made a statement which in effect described The Gambia as a nation of smugglers. This did not go down well with the well informed and educated young men of the day most of whom viewed the then Senegalese President as a neo-colonialist and such insults would not be tolerated. This statement was made a few days before the Senegalese President was due in Banjul to officially open a branch of the B.I.C.I Bank in Banjul. The occasion for the opening of the B.I.C.I. Bank provided an opportunity for some Gambians to protest at the statement that tended to show Gambia in a bad light. In the course of the protest, information reached our school that a member of the teaching Staff of the school was arrested. The class to which I belonged was the most senior class in the school. Some of us trooped out and came to the Police Station at Buckle Street, where we believed our teacher was detained. The police quickly dispersed us. I took refuge in the then Supreme Court. Although I was brought up by Gambia's most prominent lawyer P.S. N'jie, I had never seen the inside of a court room except that day. I sat in the court room watching the lawyers arguing and I loved the Latin phrases they uttered.

On this day, I decided to disappoint my father. I no longer had the vision of becoming a provincial administrator. I wanted to become a lawyer and worked hard to pass my Advance Levels with grades that will make it difficult for a university in any Commonwealth country to reject my application for admission.

My Lady, in September 1969, I got news from the Ministry of Education that AAI secured a place for me at the University of Lagos, Africa's Premier University, to read law and that the entire cost of my studies – University to Law School – would be met by the AAI. At University, I had the privilege and honour of being lectured by one of the most distinguished Lecturers, Professor I.O. Elias.

My Lady at the beginning of my third year in University, I started envisioning my role in Gambian society. From the cases I read in criminal and constitutional law, I concluded that I must become a State Law Officer, rising through the ranks to become Solicitor General or Director of Public Prosecution and ultimately branch off to the bench and be one of the Honourable Justices of The Gambia.

It was my vision that I will bring up my family in the way a great man, Solicitors-General, Directors of Public Prosecution or Justices bring up their families and give them the best of education, taking them for holidays to the U.K, U.S.A and of course Nigeria. My vision then as a law student was rather self-centered. The focus was on me as a person and my family.

In May 1973, I returned to The Gambia after passing my final exams for the law degree and took up appointment as a Prosecutor. Due to the state of the laws regulating the admission to the Nigeria and Gambia Bar, I could not be called to the Bar until November 1973. I became the first Gambian to pursue his first professional legal training outside, England, Ireland or Wales. I also became the first person of Provincial origin to become a lawyer and I am also the first Mandinka who with pride describes himself as Barrister.

My Lady, upon being admitted to the Bar in November 1973, I was appointed a State Counsel. I started seeing the fulfillment of my selfish and self-centered vision being achieved. I served as a Law Officer for seven years, during the period that I was in the law office, I was conflicted with myself. As a civil servant I knew I was subject to the direction of my superiors but as a Barrister, particularly when appearing in court, I held myself answerable to no one except the ethics of my profession. One of the positions I held in the Ministry of Justice was Acting Registrar General and Curator of Intestate Estates. At this time, I was also responsible for drafting of legislations. The leadership of the Gambia Workers Union was not making life easy for the Government. The Union was not in compliance with the law as to the filing of annual returns. As Acting Registrar General, I, on instructions of my superiors de-registered the Worker's Union. I went home in distress. I pondered on the various legal theories, I read in jurisprudence. In this particular case I saw the Marxist theory of law at play i.e **that the law is an instrument of oppression in the hands of the oppressor. The governor uses the law to subdue the governed.**

My Lady, since that day, I have fought hard to ensure that whenever and wherever I can, whatever I do as a lawyer will negate the Marxist theory. I became a staunch disciple of Jeremy Bentham – **I subscribed and still subscribe to the view that the law must be used to promote the greatest happiness of the greatest number.**

My Lady, in my humble view one of the ways to promote the greatest happiness of the greatest number is to fearlessly stand for and uphold the rights of the ordinary persons and protect them against executive excesses. I have always believed that the criminal justice system should really be used to combat crime.

My Lady, in my humble view one of the ways to promote the greatest happiness of the greatest number is to fearlessly stand for and uphold the rights of the ordinary persons and protect them against executive excesses. I have always believed that the criminal justice system should really be used to combat crime and criminals. It should never be used to get at political opponents or perceived political opponents. I expressed my total rejection of the use of the law to suppress rights in or about 1980 when a gentleman by name M.I. Jallow was brought before the Kanifing Magistrates' Court on an allegation of murder. In those days persons accused of murder were subject to a preliminary inquiry depending on the sufficiency of the evidence, the person is either indicted on information or discharged. Section 99 of the Criminal Procedure Code was then unadulterated. The right to bail was presumed. M. I. Jallow was granted bail. The State Law Office was unhappy. I was assigned the file to apply to the Supreme Court (now the High Court) to vacate the order granting bail. Mr. Jallow was a prominent

member of the “NTerrikafo”, a group of people perceived to be opponents of the then ruling party. I examined the reasons advanced by the Magistrate in granting bail and I found myself unable to argue against it. I faced my client – the Gambian state, then personified by the Attorney General in this particular instance and said to him, “I will not go to court and argue in favour of a position that I do not believe in”. My refusal to argue a case I do not believe in was dictated by my belief that when I pick up a case file and proceed to court, I cease to be bound by any directive or administrative code. I am independent but I also realized that such independence might have limits and I do not want to be bugged down by limitations – so I proceeded on five months vacation during which period I tendered my resignation. My vision of being a career Law Officer came to an end but the reasons leading to it helped shape a vision that is more altruistic.

I set up Basangsang Chambers in June 1980. The first two cases – criminal – in which I was involved as part of the defence team again revealed to me that the executive, even if the government however democratic, law abiding and benevolent may use the law to suppress dissent. I, with Mr. Secka, a lawyer of sharp intellect and profound ability defended some gentlemen who were charged for managing an unlawful society. We also defended a group of young men who were alleged to have been in possession of arms. The evidence showed that the arms were in fact bows and arrows. I stood against the misuse of the criminal justice system and sided the oppressed.

My Lady, in July 1981 there was an attempt to overthrow the democratically elected government by a group of people who did not seem united in their objective. The attempt failed resulting in massive arrests. A state of emergency was declared. I appeared and defended at least two hundred people who were brought before the Review Tribunal established to investigate the allegation of involvement in the failed coup and make recommendations to the President for their release. From 1981, I represented accused persons in some of the most celebrated criminal cases – amongst them ***The State v S.M. Dibba, The State v Musa F.K. Sanneh & ors, The State v Ebrima Barrow.*** These are some of the treason cases in which I offered pro bono services for the sake of justice. I also argued some of the most celebrated constitutional law cases – ***Halifa Sallah & ors, V Speaker of the National Assembly, U.D.P v AG, Kemesseng Jammeh v AG & U.D.P, N.R.P & allied Momodou K. Sanneh v AG.*** In the areas of administrative law, I have to my credit the case of ***Continent Bank v Central Bank.*** My Lady today in every court of The Gambia, the case of the ***Fatou Badjie v Joseph Bassen*** is cited daily in support of one or other proposition of law. I am proud that I took up some of the issues in the Supreme Court. I am gratified that in my advocacy I have contributed to the development of the jurisprudence of this country in various ways. In some of the treason cases, I was ably assisted by Mr. A.A.B Gaye of counsel.

In my practice I had the privilege of appearing before several judges the majority of them being Nigerians. They included the Honourable Justices Adeyinka Morgan, E.O Ayoola Sr, E.O Ayoola (CJ), Olatawura, Akanbi, Wali, Ejiwumi, Ahmed Belgore, A.D. Yahya, C.S Yusuf, N, Izuako, Okoi- Itam, Ihekire, Omosun (CJ). Gambia was never so blessed. I was proud and still proud that the country in which I received my legal

education could produce so eminent and fearless jurists willing to serve in a sister African country to uphold the rule of law.

My Lady speaking of eminent Nigeria Jurists, it will be remiss of me if I fail to mention Honourable Justice Ota and Agim. The latter we all know was at one time Chief Justice. Before then he was D.P.P. I locked heads with him in many cases. I will just mention the cases of *IGP v Omar Amadou Jallow*, a senior executive member of the opposition P.P.P. and the *State v Ebrima Barrow & Ors* earlier mentioned. Honourable Justice Agim was one of the most accomplished prosecutors I faced. We both have enormous respect for each other. He, like Chief Justice E.O. Ayoola often exchanged views with me on legal issues and the administration of the judiciary. My Lady, in my readings of cases from various Commonwealth and Common Law jurisdictions, I became particularly impressed with the judicial valor of Honourable Justice Belgore CJN, Hon. Justice Oputa, Hon. Justice Esso, Hon. Justice Obaseki, Hon. Justice Uwais, Hon. Justice Wali, Hon. Justice Karibi-White amongst many other justices of the Nigerian judiciary. It is a fact that these justices faced the greatest challenges any judicial officer could face. They had the onerous task of dispensing justice in an era dominated by military dictatorship. Yet they demonstrated by their decisions that the law speaks the same language under a military dictatorship as under a democratically elected government. Such cases as *Obuya Memorial Hospital v AG, Ojukwe v Military Governor of Lagos State* are ample testimony to the fact that these justices of the superior courts of Nigeria would do nothing but to advance the rule of law and keep executive excesses at bay.

My Lady, when a Nigerian national assumes office as one of the Justices of the Superior Courts of The Gambia I look for an Obaseki, Esso, Oputa, a Wali, a Belgore, an Ejuwumi, an Ayoola, a Karibi-White and all those justices of the Nigerian judiciary who are the subject of the book titled "**Tribute to Courage**". The opinions of those great defenders of the law have influenced me a lot in my practice of the law. They have provided for me the elan to be more of service to the public than to my family. It was in the spirit of serving the public that I took the risk of defending many members, ministers and public officers – of the ousted regime. In fact, I was detained by the military junta. This did not deter me in my quest for justice for those who for good reason fall out of favour with the Executive.

My lady, during the military rule, it dawned on me that any government whether a dictatorship or a true democracy turns first to lawyers for whatever its wishes to accomplish. It is the lawyers that draft the most draconian legislations. It is also the lawyers that draft and draft legislation that catalyst economic growth and development with its attendant by products. It is also the lawyers who help put in place a constitution that may or may not establish an autocratic rule.

My Lady, the preamble to the 1997 Constitution states amongst other things that "**we the people of The Gambia have accomplished a great and historic task. We have had our say on how we should be governed**". My Lady, I was part of that historic task and I have had a say in how we Gambians should be governed. I did so in this very court room wherein members of The Gambia Bar Association met to make recommendations to the Constitutional Review Commission on the new Constitution of

The Gambia. I was then Vice President of The Gambia Bar Association. I was also a part of a small group of lawyers comprising Mr. O.M.E Sillah, Mr. P.C.O. Secka of blessed memory, Hon Justice R.C. Sock that submitted various recommendations to the Constitutional Review Commission.

Of interest to me is the independence of the judiciary. I saw then the threat to the independence of the judiciary. I believed that a provision such as Section 120 (3) of the Constitution, together with an Esso type of Judges will guarantee the absolute independence of the judiciary. I believe that with an independent judiciary no one will starve of justice. I believe that with an independent judiciary, democracy will be constitutionalised.

In August 1996, I was compelled to answer the call of Gambians who believe in democracy, constitutionalism and the rule of law to lead the United Democratic Party. It was and still is the hope of ushering in true democratic values in The Gambia. The United Democratic Party seeks to falsify Karl Marx's theory that the law is an instrument of oppression. The United Democratic Party believes in utilitarianism – to use the law as a vehicle for the maximization of the happiness of the greatest number of people.

Since 1996, I have been on the side of the law. I have encouraged my supporters to respect the law and eschew violence. That is why, except in the cases presided over by foreign nationals, members of the U.D.P who have faced prosecution in this country have been acquitted.

It is my cardinal belief that every law enforcement officer has the authority to arrest persons suspected of having committed an offence. But I reject the slightest notion that a law enforcement officer has authority to arrest any person and subject him to torture resulting in his death. This is murder. **I cannot condone it, and no civilized nation will condone it.**

My Lady, I objected to The Gambia Police Intervention Unit's arrest of Ebrima Solo Sandeng and his subsequent detention at the premises of the National Intelligence Agency during which period he was murdered. His death was never communicated to his family or his political associates. There was no Coroner's inquest to ascertain the cause of his death. His remains have not been delivered to his family. The ordeal he went through before he breathed his last breath is deposed to in an affidavit sworn to by Nogui Njie filed in support of the habeas corpus application pending before this Honourable Court.

On the same day and at the same N.I.A. premises, Fatoumatta Jawara, Fatou Camara and Nogui Njie were brutalized by persons who one can only conclude are agents of the N.I.A. They were subjected to the most horrendous acts of brutality. They were not only humiliated by the thugs. The torture inflicted on them was more severe on the most private parts of their lives.

The humiliation, the horrendous acts of barbarism meted out to these women is humiliation and barbarism to all women of Africa and The Gambia in particular.

My Lady, if these are not sufficient and good reasons for any person with conscience to go on a peaceful demonstration/procession to ask for the release of Solo Sandeng dead or alive, and to protest against the humiliation and acts of thuggery committed on these women? Every woman in The Gambia today stands in solidarity with Solo Sandeng's wife. Every woman in Africa and The Gambia in particular stands in solidarity with Fatoumatta Jawara, Nogui Njie and Fatou Camara.

My Lady instead of the perpetrators of these crimes of murder and torture of these women being brought before the courts to answer for their acts of criminality, I and my people are flung before the courts at the behest of our political adversary.

My Lady, I refuse to ask this court to be lenient with me because in so doing I am accepting the fact, that Mr. Sandeng deserved to be tortured to death by the security agents of this country. My Lady I know the purpose of an allocutus but I refuse to ask this court for leniency because in so doing, I break rank with Fatoumatta Jawara, Fatou Camara and Nogui Njie who in spite of their humiliation and acts of horrendous brutality committed on them are now being persecuted at the behest of our political adversary whilst the real criminals are walking freely on the streets of Banjul and congratulating themselves for accomplishing their acts of brutality.

When I was flung before the court, I comforted myself with the belief that I will have the full protection of the Constitution and other laws of The Gambia. But I was disappointed. My experience as an advocate led me to conclude that my conviction as a pre-arranged revelation in court. Every procedural rule guaranteeing my fair trial was ignored. The first theory any law student in law school learns in that Civil Procedure Rules apply to the trial of civil matters and criminal Procedure Code applies to the trial of criminal matters. My right to representation by counsel as provided for by the constitution was denied because this court ruled that we the accused persons can defend ourselves against the charges we face. I do not know which Constitution in a common law country makes a distinction between offences for which an accused person can be represented by counsel and those for which an accused must defend himself.

I have not been availed the due process of law. Because of my pre-arranged conviction and because I strongly believe that my political adversaries have their eyes on this case, this court, it is very evident that this court, as some of the ex tempore Rulings show, has deprived me of a fair trial. I will not in the circumstances ask the court for leniency. To do so will be accepting that I was availed the due process of the law when I was not.

My lady, on 21<sup>st</sup> April 2016 heavily armed Police Intervention Unit Officers escorted me and my co-accused to court. Your Ladyship could not have failed to notice the presence of these armed security officers in and around the court. Since 21<sup>st</sup> April up to date each day I come to court, I do so in handcuffs. I am not indicted on any felony. All Gambians who know me will attest to the fact that I and my party members are not violent and we eschew violence by any one including members of all security outfits in The Gambia.

Putting me and my co-accused handcuffs is very symbolic and sends a significant and profound message to all and sundry. The handcuff represents the chain bondage, it shows that there is no free-man in The Gambia – we are all crawling under our political adversary who towers above all of us as a colossus. It also tells that no one can truthfully give evidence in court in a case such as the one I am involved in. It tells out in no certain terms that even Judges look over their shoulders in cases such as this. It shows that there is no one in The Gambia now is free to act according to the dictates of his or her conscience.

It is my mission to reverse this unacceptable state of affairs by means that accord both the laws and constitution of this country. It is my mission to actualize for Gambians the preamble statement in the Constitution that it **“provides for us a fundamental law, which affirms our commitment to freedom, justice, probity and accountability.”**

My Lady, logic demands that ironies are rejected. One of the ironies in this case is that Nigerian lawyers can reject the application of the constitutional law principles expounded by eminent Judges of the courts in IGP v All Nigerian People’s Party. Those principles are being rejected because Nigerian Judges here believe that Nigerians deserve better protection of the constitutional provisions that are in pari material with the 1997 Constitution of The Gambia, but we who are born and live in the birth place of the African Charter on Human and Peoples Rights sometimes called the Banjul Charter, we who are born and live in the country that hosts the African Commission on Human Rights, the African Centre for Democracy and Human Rights Studies and other international human rights organizations, we are born and live in the natural home for an African Court for Human rights can be denied the same protection by a court presided over by a Nigerian aided by a Nigerian who pretends to be a Prosecutor. It is for all these reasons that I refuse to ask the court for any leniency.

My Lady, I am not embarrassed by this conviction. My children, brothers, cousins, sisters are not embarrassed by my conviction. My political family and my friends are not embarrassed by my conviction. Today I take pride standing amongst the likes of Chief Obafeni Awolowo, Chief Anthony Enahoro, Mallam Amunikodi, Ken Saro Wiwa, President Olusegun Obasanjo, Dr, Kwame Krumah, Nelson Mandela, Abdoulaye Wade (former President of Senegal) and President Alfa Condeh of Guinea.

My Lady I am prepared to receive the sentence that I believe has also been pre-determined even before my arraignment.

But before receiving the sentence, it is obvious to everyone that I am the prime target of this persecution. I would therefore ask that the other accused persons be sentenced to time already served.